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22 OCT 1968

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MEMORANDUM FOR: Deputy Director for Support

SUBJECT : CIA Minimum Fallback Position on Control of
Agency Communications

1. This memorandum is for your action. A recommendation will be found in paragraph 3.
2. Earlier this year you asked me to develop a minimum fallback position on control of Agency communications. Accordingly, Attachment C was prepared. It contains a great deal of necessary background information since it was designed to present in one paper all the factors relating to the need for a fallback position. In view of your familiarity with the problem, I suggest that the following extract from Attachment C may be all you will wish to read:

"5. I discussed this entire problem with Mr. John S. Warner, Deputy General Counsel, in order to reaffirm the legal and statutory basis for the Agency's position concerning privacy and control of its communications system. We reviewed the two letters (Reference D) written by Mr. McCone to the Bureau of the Budget in 1962. These letters cited Section 102(d)(3) of the National Security Act of 1947 and Section 6 of P. L. 110. Mr. Warner advised as follows:

"a. Section 102(d)(3) provides ' . . . That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure: . . . ' Section 6 of P. L. 110 merely implements Section 102(d)(3) and does not enlarge the Director's responsibility.

"b. The responsibility placed on the Director is a positive duty and clearly requires the Director to take all steps possible to ensure the security of sources and methods. For example, if a part of our communications system were controlled by another agency, it could be charged that the Director had not completely fulfilled his responsibilities for security if there were a leak out of that part of the

system. The responsibility for an unauthorized disclosure of sources and methods is not lifted off the Director's shoulders merely by his saying that CIA had agreed with another agency that it would control a segment of the communications system and that that agency had agreed to maintain a proper degree of security. The only true control is command control, and responsibility, as placed by statute, cannot be shifted or delegated. It was also pointed out that there have been recent court decisions, both in the Federal District Court and in the Circuit Court of Appeals, recognizing that the statutory responsibility of the Director is a positive one requiring him to take affirmative action to implement it.

"c. Furthermore, by statute the Director is the principal intelligence adviser to the President. In order to fulfill this role he must not only collect intelligence but he must have a rapid, reliable and secure communications system over which to transport it. Again, in the event of an intelligence failure due to faulty communications, the Director is not relieved of his responsibility because the breakdown occurred in a part of the communications system over which he did not have command control.

"d. It was also pointed out that the CIA Subcommittees in the House and the Senate have been briefed over the years on the Agency's communications system and its accomplishments, both on a routine basis and in crisis situations. In addition, these Subcommittees are well aware of some of the difficulties which have occurred in the Department of Defense communications systems. In view of this, it would appear that, to whatever extent these Subcommittees might become involved in an effort to wrest control of communications from the Agency, they would affirmatively support the Agency and would oppose vigorously any action which could threaten Agency control of its communications system, thus lessening its security and effectiveness.

"e. In summary, there is a sound legal basis for the Agency position. In fact, yielding command control of all or a part of communications could well be construed as a failure by the DCI to fulfill completely his statutory responsibilities."

3. While the above quotation deals with the broad question, I am convinced that we must set forth, in addition, certain communications and other principles that cannot be relaxed or compromised if we are to

help the Director fulfill his statutory responsibilities. Therefore, after consultation with Legal as well as Legislative Counsel (see Attachment B), we have outlined those minimum requirements as stated in Attachment A. I recommend that they be adopted as an Agency position not to be volunteered but to be used as necessary to prevent loss of control, or degradation of effectiveness of the Agency's communications.



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Director of Communications

Atts:

- A. Proposed Agency Policy Position on Control of Agency Communications
- B. Legislative Views on Control of Communications
- C. NCS Representative Memorandum to D/CO on Same Subject

Recommendation contained in paragraph 3 is approved.

SIGNED R. L. Bannerman

4 NOV 1968

Deputy Director for Support

Date

Distribution:

Orig. & 2 - Addressee w/att.

- ~~1~~ - Mr. J. Maury/Legislative Counsel w/att.
- 1 - Mr. J. Warner (D/General Counsel) w/att.

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Statement of CIA Communications Policy

1. The Director of Central Intelligence, as the principal intelligence adviser to the President, must be in command of a world-wide communications system which is keyed to meet the requirements of national intelligence collection.

2. In addition, this system must be designed for maximum security protection so as to enable the DCI to discharge his statutory responsibilities for the protection of intelligence sources and methods from unauthorized disclosure as required by Section 102(d)(3) of the National Security Act of 1947 as amended and the Central Intelligence Act of 1949 as amended (Public Law 81-110). In the accomplishment of the foregoing the following are required:

a. The DCI must be in complete control of his communications system at all times.

b. CIA traffic flowing between its covert activities and Headquarters and among the covert activities must be enciphered regardless of classification.

c. CIA must have end-to-end encryption or its equivalent to protect intra-Agency clear text from unauthorized disclosure during transmission.

d. CIA authorities must control, and CIA cleared and trained personnel must operate all communications facilities where intra-Agency traffic appears in plain text form.

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e. CIA cannot accept external communications requirements or participate in communications activities which will degrade the communications capability currently available to the Agency or impair the security of the communications system.

f. The DCI must maintain his authority to allocate and reallocate the Agency's resources, including communications in accordance with Agency priorities.